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混业经营趋势下金融监管协调机制研究

Research on the Coordination Mechanism of Financial Supervision and Regulation under Mixed-operation

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内容摘要

2008 年金融危机，暴露了金融监管本土化和金融全球化之间的矛盾，国际社会更加关注金融监管的国际协调和宏观审慎监管，掀起了一股金融监管改革的浪潮，金融监管部门之间的协调更是得到前所未有的强调和重视。2010 年，《多德——弗兰克法案》通过，依据该法案金融稳定监督委员会成立，负责协调美国各个金融监管部门。英国将金融服务局（FSA）一分为二，成立金融行为监管局（FCA）和审慎监管局（PRA），英格兰银行下设金融政策委员会（FPC），通过立法和备忘录的形式，加强监管协调。混业经营趋势和宏观审慎监管对我国金融监管协调提出了严峻挑战。本文旨在探寻混业经营形势下，金融监管协调机制中监管职权的分工与制衡，监管信息的征集与共享和监管行动一致性问题的一般性规律，期以能为我国金融监管协调机制的完善提供理论建言。

全文分为导论、正文和结论三部分。其中正文分为六章，分别对金融监管协调机制的理论基础、监管职权分工与制衡机制、监管信息的征集与共享机制、监管行动一致性机制、国际金融监管协调机制、我国监管协调机制的现实问题与完善等方面，予以较为深入的讨论和分析。

第一章着重阐述混业经营趋势下金融监管协调机制的相关基础理论。本章首先对金融监管协调进行内涵界定和特征分析，以此为基础，明确金融监管协调机制的基本构成和产生基础、价值与目标。金融监管协调机制的产生源于金融机构和监管主体活动的外部性，特别是负外部性，需要金融监管协调，实现公平收益。以制度变迁和全球治理理论为基点，分别从时间和空间视角分析了金融监管协调的必要性。混业经营趋势的发展给金融监管协调机制带来了挑战，也带来了新的发展契机。

第二章主要讨论了混业经营趋势下金融监管机构的职权分工与权衡机制。探因金融监管职权分工与权衡机制，既有金融监管主体多元，监管目标差异外部因素，亦有监管主体激励约束机制不畅通及有限理性的内部因素。金融监管机构职权分工与权衡机制如何，关系着金融体系的效率和稳健。以我国德隆集团为例，分析了金融监管机构职权分工与权衡不当对金

融效率和金融稳定的影响。同时以美国、澳大利亚的监管职权分工与权衡实践，总结了协调经验，并分析了其中的建设意义和局限之处。

第三章集中研究了在混业经营形势下如何通过监管信息的征集与共享，减轻金融监管机构间的信息不对称问题。多头监管主体的存在和监管政策的相关性，决定了金融信息共享的必要性。然而，信息共享平台缺乏、数据格式要求不一的现实，不仅加重了金融企业的负担，更制约了监管效率。通过探究美国、澳大利亚、德国、英国等国监管信息征集与共享的实践，提炼了有效经验，同时认为在信息征集与共享过程中，须注重科学技术的运用，并注意在监管信息的透明度与保密性之间保持平衡。

第四章探讨混业经营形势下金融监管行动一致性机制的构建问题。金融监管行动不一致，根源在于监管者之间监管目标、监管文化的差异性，以及监管竞争的存在。混业经营时期，交叉性金融产品和金融控股公司的出现，使得金融风险的滋生和传染也更具跨业性，出于执法资源和监管效率考量，需要协调监管行动。本章对英国、美国、澳大利亚等国在市场准入、人员培训与交流 and 危机处理等协调监管行动实践，予以介绍分析。通过研究国际处理实践发现：协调监管理念凸显，同时存在问责机制的尴尬和金融监管权监督问题。

第五章主要针对混业经营形势下的金融监管国际协调机制，予以探究。维护本国的金融安全和金融利益，是各国参与金融监管国际协调的原始驱动力。2008 年爆发的金融危机和迅猛的混业发展趋势是金融监管国际协调的现实推动力，同时也存在着各国金融监管法制和监管标准不一，需要协调的客观必要性。从职权分工与制衡机制、监管信息的征集与共享、监管行动一致性方面，考量了当下巴塞尔委员会、国际证券委员会组织、国际保险监督官联合会、G20、FSB、欧盟的监管实践。金融危机和混业经营成为监管博弈的新元素，促成各国达成“（合作，合作）”策略。同时在金融监管国际协调中，也要注意协调成本考量、监管标准多样性和发达经济体主导等现实问题。

第六章探讨混业经营趋势下我国金融监管协调机制的现状与完善，从而实现这一论题的本土化复归。我国存在金融监管协调机制不健全、职责界定不明确，而信息征集与共享安排和监管行动一致性机制，均呈现“碎

片化”、“随机性”，基本停留在原则性规定层面等问题，有违金融监管之金融效率和金融稳定目标。在考察和借鉴域外国家金融监管协调机制的基础上，提出近期赋权央行牵头人，做实金融监管协调机制，设立争端解决机制；签订备忘录，建立定期信息共享与交流制度，设立检查委员会、统一报告格式等举措，完善监管信息征集与共享机制，促进监管决策和协同监管。在监管行动一致性方面，推动市场准入协调，加大监管人员的培训和交流力度，以提升混业经营监管的有效性。作为新兴发展中经济体，我国积极学习发达经济体参与国际金融监管的方式，以区域协调和金砖协调为突破口，推动国际金融监管组织的改革，参与监管规则的制定，实现从国际规则的“接受者”到“领导者”的转变。

[关键词]监管协调；金融监管国际协调；监管职权分工与制衡；信息共享；监管行动一致性；LEI 系统；制度变迁；

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ABSTRACT

The financial crisis of 2008 has exposed the contradiction between the localization of financial supervision and financial globalization. Hence, international community pays more attention to international coordination and macro-prudential supervision, which sets off a new wave of financial regulatory reform. At the same time, more emphasis are put on coordination and cooperation between financial regulators. In 2010, the United States passed the Dodd - Frank Act, which establishes the Financial Stability Oversight Committee (FSOC) responsible for the coordination between the U.S. financial supervision sectors. Britain divided the Financial Services Authority (FSA) in two - the Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA), along with the establishment of the Financial Policy Committee (FPC) under the Bank of England. Strengthen supervision and coordination through the form of legislation and memorandum among them. The trend of macro-prudential supervision and mixed-operation have put forward severe challenges to the coordination of financial supervision in China. The purpose of this thesis is to explore the general law of the coordination mechanism of financial supervision and regulation, including the division and balance of functions and power, the collection and sharing of regulatory information, and the consistency of action during the mixed-operation, and to provide theoretical suggestions about the perfection of China coordination mechanism about financial supervision and regulation.

The dissertation is divided into three parts, including introduction, body and conclusion. The body consists of six chapters, having relatively deep discussion and analysis about the theoretical basis, the division and balance mechanism about functions and power, the mechanism about collection and sharing of regulatory information and the mechanism about consistency of action, the international coordination mechanism of financial supervision, as well as the reality and further desirable improvement of the problem in China.

Chapter One elaborates the related basic theories of coordination mechanism about financial supervision and regulation under mixed-operation. After the definition of coordination of financial regulation and analysis of its characteristics, this chapter clarifies the basic composition, foundation, values and goals of the mechanism of coordination of financial regulation. The mechanism of coordination of financial supervision and regulation stems from the externality of the financial activities conducted by financial institutions and regulatory actions, especially the negative externality. Subsequently, coordination could achieve fair returns. The theory of Institution Change and Global Governance analyzes the necessity of the coordination of financial supervision and regulation, from the perspective of time and space respectively. The development of mixed-operation brings challenges and new development opportunities to the mechanism of coordination of financial supervision and regulation.

Chapter Two discusses the mechanism to divide and balance the function and power of financial supervision and regulation. The mechanism arises from and multiple regulatory agencies and the differences between regulatory objectives. How the division and balance mechanism of functions and powers of the financial regulatory agencies works, determines the efficiency and stability of the financial system. The chapter analyses the influence on financial efficiency and financial stability by inappropriate division and balance of functions and powers of the financial regulatory agencies, takes Delong group as an example. In addition to, coordination experience is summarized and positive significance and limitations have been analyzed through the practice of division and balance of functions and powers in the U.S. and Australia.

Chapter Three focuses on how to eliminate information asymmetry between financial regulatory agencies through the collection and sharing of information. The existence of multiple regulatory agencies and correlation of regulatory policies determines the necessity of financial information sharing. However, the reality that lack of information sharing platform and different data format requirements, aggravates the burden of financial enterprises and restricts the regulatory efficiency at

the same time. Through exploration of the practice about collection and sharing of information in the U.S., Australia, German and the England, effective experience has been refined and the importance of science technology has been emphasized, and the balance should be kept between the transparency and confidentiality.

Chapter Four explores the construction of mechanism about consistency of action of financial supervision and regulation under mixed-operation. Difference in regulatory objectives and regulatory culture, and the existence of regulatory competition, incurs the inconsistent financial regulatory action. The appearance of crossing financial products and financial holding companies makes the financial risks breed and spread inter-financial sectors. The consideration of law enforcement resources and regulatory efficiency needs coordination of regulatory action. The chapter introduces and analyzes the coordinated regulatory practice of the England, the U.S., Australia in market access, personnel training and communication, crisis management. The coordination regulatory philosophy manifests itself, while the embarrassing situation of accountability mechanism and supervision of financial supervision stand still.

Chapter Five analyzes the international coordination mechanism of financial supervision and regulation. To safeguard national financial security and financial interests is the primary driving force for the participation of international coordination of financial supervision of all countries. The financial crisis of 2008 and the rapid development trend of mixed operation are the real impetus to the international coordination of financial supervision and regulation. The difference between legal system of financial regulation and supervision standard of each country ,puts forward the objective necessity for coordination. Investigation has been made about the practice of division and balance about functions and power, collection and sharing of regulatory information and the consistency of action among Basel Committee, the IOSCO, the IAIS, the G20, the FSB, the European Union. The financial crisis and the mixed operation have joined regulation game, which promote countries to achieve cooperation, cooperation strategy. At the same time, it should pay attention to the coordination costs, regulatory standards diversity, and dominant position of developed

economy during the international coordination of financial supervision and regulation.

Chapter Six emphasizes on the reality and improvement of the coordination mechanism of financial supervision and regulation. The existence of financial regulatory coordination mechanism is not perfect, and the responsibility is unclear, together with the fragmentation and randomness of information collection and sharing arrangements and regulatory action consistency mechanism, staying at the level of principle, which against financial efficiency and financial stability objectives. On the basis of coordination mechanism of financial supervision and regulation in foreign countries, the suggestion is to recently empower the central bank and to consolidate coordination mechanism of financial supervision and regulation. And the establishment of a dispute settlement mechanism. To improve the regulatory information collection and sharing mechanism, through the signing of memorandum and the establishment of regular information sharing and exchange system, the establishment of Inspection Commission responsible for unifying reporting format and other initiatives, which could promote regulatory decision-making and collaborative supervision. As to the mechanism of regulatory action consistency, coordination of market access is to be promoted, supervision of personnel training and communication should be enhanced. The effectiveness of mixed operation supervision could be enhanced in this way. As emerging and developing economies, China should learn from developed economies about how to participate in the international financial supervision and regulation positively, coordinate with the BRICs and regional countries as a breakthrough to promote the reform of international financial regulatory organization and the participation in formulation of regulations, and make the transition from a receiver to a leader of international rules.

Key words: coordination of financial supervision and regulation; international coordination of financial supervision and regulation; division and balance of regulatory power; collection and sharing of regulatory information; consistency of regulatory action; LEI system; institutional change

缩略语表

| | |
|-------|--|
| APRA | Australian Prudential Regulation Authority (澳大利亚审慎监管局) |
| ASIC | Australian Securities and Investments Commission (澳大利亚证券及投资委员会) |
| BCBS | Basel Committee on Banking Supervision (巴塞尔银行监管委员会) |
| BCCI | Bank of Credit and Commerce International (国际信贷商业银行) |
| BHC | Bank Holding Company(银行控股公司) |
| BHCA | Bank Holding Company Act(《银行控股公司法》) |
| CDS | Credit Default Swap(信用违约互换) |
| CFPB | Consumer Financial Protection Bureau (消费者金融保护局) |
| CFR | The Council of Financial Regulators (金融监管理事会) |
| EBA | European Banking Authority (欧洲银行业管理局) |
| EEO | the Examiner Education Office (金融检查者教育办公室) |
| EIOPA | European Insurance and Occupational Pensions Authority (欧洲保险和职业养老金管理局) |
| ESMA | European Securities and market Authority (欧洲证券和市场管理局) |
| FCA | Financial Conduct Authority (金融市场行为监管局) |
| FDIC | Federal Deposit Insurance Corporation (联邦存款保险公司) |
| FFIEC | Federal Financial Institutions Examinations Council(联邦金融机构检查委员会) |
| FSA | Financial Service Authority(英国金融服务管理局) |
| FSAP | Financial Sector Assessment Program (金融系统评估) |
| FSB | Financial Stability Board (金融稳定理事会) |
| FSMA | Financial Services and Markets Act (《金融服务与市场法》) |
| FSOC | Financial Stability Oversight Council(金融稳定监管委员会) |
| GATS | General Agreement on Trade in Services (《服务贸易总协定》) |
| GLEIF | Global LEI Foundation (全球 LEI 系统基金会) |

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| IAIS | International Association of Insurance Supervisors（国际保险监督官协会） |
| IMF | International Monetary Fund（国际货币基金组织） |
| IOSCO | International Organization of Securities Commissions（国际证监会组织） |
| LEI | Legal Entity Identity（法人识别代码） |
| OCC | Office of Comptroller of Currency（美国货币监理署） |
| OFR | Office of Financial Research（金融研究办公室） |
| OTS | Office of Thrift Supervision(美国储蓄机构管理局) |
| PRA | Prudential Regulation Authority（英国审慎监管局） |
| RBA | Reserve Bank of Australia（澳大利亚储备银行） |
| SEC | Securities and Exchange Commission(美国证券交易委员会) |
| SRR | Special Resolution Regime（特别处理机制） |
| TPP | Trans-Pacific Partnership Agreement（《跨太平洋伙伴关系协定》） |
| TTIP | Transatlantic Trade and Investment Partnership（《跨大西洋贸易和投资伙伴协定》） |

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